IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 965 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereund : NO

JJJJ

herein have filed this petition praying for a writ of mandamus or any other appropriate writ order or direction directing the respondents to promote the petitioners to the post of Sales-Tax Inspectors with effect from such retrospective date as per the order of this Court with all consequential monetary and other benefits. The petitioners have further prayed that this Court may declare Rule 2(b) of the Recruitment Rules of 1976 as ultravires Articles 14 and 16 of the Constitution of India and also ultra vires Gujarat Sales Tax Department Conditions of services relating to clerks, Typists, Sr.Clerks and Sales Tax Inspectors (Examination) Rules 1976.

#. The facts giving rise to this petition are as under:

2.1. The petitioners and various others were appointed as Jr.Clerks in sales-tax department department on on 18.11.1967 and they were working in Rajkot Division of sales-tax department. The petitioner no.1 has passed departmental examination for Jr.Clerks on 30.1.1971. Thereafter he passed the departmental examination for the post of Sales-tax Inspector somewhere on 11.10.1972 and thereafter he name has appeared in the seniority list of 1977 at Sr.No. 230. It is the contention of the petitioners that they were working as Jr.Clerk in the Rajkot Division of Sales Tax Department. The petitioners have passed the departmental examination as stated above for the purpose of being appointed as Sales Tax Inspector under under Gujarat Sales tax Department(Conditions of Service relating to Clerks and Inspectors Examination)Rules 1967.

2.2 It is the contention of the petitioners that the respondent Government has denied them promotion to the post of Sales Tax Inspectors . All the clerks in the Divisions are eligible for promotion to the post of Sales-tax Inspectors subject to their passing the promotion examination as per rules. The petitioners submit that since qualified clerks who have passed the promotion examination and are working in different divisions, it is necessary that their inter se seniority is maintained and thereafter they were given promotion according to their inter se seniority. The petitioners submit that under the Rules of 1967 the petitioners had qualified and had become entitled to promotion before the persons who subsequently passed the examination beyond specified time or changes. According to them the Government without amending these Rules, issued Government Resolution somewhere in 1974. These Rules are

called Gujarat Sales Tax Department (Conditions of Service relating to Clerks and Inspectors Examination) Rules 1967 (hereinafter referred to as the Rules). Thus all the clerks in the Divisions are equally eligible for promotion to the post of Sales-tax Inspector subject to their passing the promotion examination as per rules. The petitioners have relied upon Rule 7 of the said Rules, which reads as under:

"Rule.7: Where a clerk who has failed to pass the Inspector's exam. Within the period specified in rule 4 and according to the chances available to him under rule 5, he shall not withstanding such failure, be eligible to appear at any time in such exam. on payment of an exam. Fee of Rs. 15 and if he passes the exam, he shall be eligible for promotion to the post of S.T.I.

Provided that he shall not be entitled to claim preference to those persons who may have passed the examination earlier.

2.3 The petitioners submit that in view of the aforesaid Rules since the Clerks who have passed the promotional examination are working in different offices and therefore it is necessary that inter se seniority is maintained and they are given promotion according to their inter se seniority because the Rules requires that the the promotion must be given according to the seniority.

2.4 It has been alleged in the petition that the respondents have failed to prepare a implement such a combined relative seniority of qualified clerks of different divisions. The petitioners are working in Rajkot Division have been put to great disadvantage as compared to those in Ahmedabad and Baroda Divisions as there were large number of promotion posts in those divisions and persons similarly situated in different divisions got unequal treatment and unequal opportunity for promotion.

2.5. It is the case of the petitioners that the petitioners are identically situated and senior to those persons and therefore, the petitioners are entitled to be promoted with effect from the date on which those persons were promoted.

2.6. It is the case of the petitioners that Government

prepared a seniority list of persons who are junior to the petitioner in the State level seniority and promoted them to the post of Sales-Tax Inspectors. Copy of the said seniority list of annexed to the petition at Annexure.B.

2.7. It the case of the petitioners that as per the said seniority list, people who are junior to the petitioners have been given promotion as Sales-tax Inspectors and since the petitioners are identically situated and senior to those persons the petitioners are entitled to be promoted with effect from the date on which those persons were promoted.

2.8. It is the case of the petitioner that as as per the Rule, the Clerks who are passing the promotion examination within the specified time and specified chances will get seniority over the persons who have not passed the promotion examination and they may be given subsequent chances.

2.9. It is the case of the petitioners that under Rule 67 the petitioners have become entitled for promotion before the persons who have subsequently passed the same beyond the time and chances.

2.10. It is further the case of the petitioner that without amending the Rules Government issued GR dated 1.2.1974 and thereby illegally sought to introduce an entirely new and strange category of Sr.Clerks who were governed by different Rules altogether. Not only that the new category of Sr.. clerks were made eligible for promotion to the post of Sales Tax Inspectors but also it was further directed that the post of Sales Tax Inspectors should first be filled by promotion of Sr.Clerks who have passed the promotion examination and only if they are not available by promotion of clerks who have passed the promotion examination. It was further submitted that aforesaid Resolution is clearly contrary to the statutory rules in this behalf. It was further submitted that under the statutory rules the clerks and senior clerks are governed by different sets of rules and the examination rules for the post of Sales-Tax Inspector do not include Sr.Clerk and their entry and eligibility for the examination and promotion is contrary to the statutory rules.

2.11 It was further submitted that Rules of 1967 were further amended and superseded by the rules called " The Gujarat Sales Tax Department" (Conditions of Service Relating of Clerks, Typists, Sr.Clerks and Sales Tax

Inspector Examination Rules 1976 from 14.9.1976.

"Rule-7(2) Where a Clerk, Typist or a Senior Clerk has failed to pass the S.T.I's exam. Within the specified period in rule-4 & within the chances available to him under rule 5, he shall notwithstanding such failure be eligible to appear at any time in such exam on payment of an exam. Fee of Rs. 15 and if he passes the exam., he shall be considered for promotion of a post of S.T.I.

Provided that he shall not be entitled to claim seniority in the cadre of S.T.I. over those who may have been promoted as S.T.I.s before he qualified himself for promotion to the post of S.T.I. on account of their having passed the departmental exam. within the period specified in rule-4 & within the chances available to him under rule 5."

Under these rules, Sr.Clerks are for the first time made statutory eligible for appearing in the examination. Under Rule 4 of this these rule both clerk and Sr.Clerk are eligible for appearing in the promotion examination and for the promotion all the persons are required to pass the examination within specified chances and within the specified period.

2.12 It is further submitted that Rule 7 enables the persons who have failed to pass the examination within specified period and specified chances to appear at the examination on payment of examination fee and to pass the same and if he passes the examination he is considered qualified for promotion to the post of Sales Tax Inspector. The petitioners who have passed the examination not only earlier but also within specified chances and within specified period, are not given the said promotion which is clearly illegal arbitrary and discriminatory. The petitioners submit that the rules do not specifically provide for such contingency but the provisions of passing the examination within specified period and specified chances clearly indicated that the intention of the rule making authority is to make a clear and rational distinction between the person who pass the promotion examination within the specified time and chances to those who failed to pass the examination

within the specified period and specified chances. It was further submitted that the petitioners should have been given promotion first before those persons who were promoted to the petitioners earlier and the petitioners were required to be promoted with effect from the date when those persons were promoted.

2.13 It was further submitted that as per the Rules 1976 which came into force with effect from 14.9.1976 the petitioners had earned the right to promotion and had passed the examination within the specified chances and period as against the persons who had failed to do so. This valuable right is not affected and is saved and the petitioners are entitled to be promoted on that basis.

2.14. During the period of 1973 to 1976 Government did not care to fill in the many promotion posts. If all the posts and vacancies of Sales-Tax Inspectors were filled in, there would not have been any injustice. However, the petitioner had qualified and earned the right to promotion but promotions were not given to the petitioners for all these years and thereafter the rules amended and now a new interpretation is sought to be given so as to deprive the petitioners of any chance of promotion for 8 to 10 years more. Thus rendering the success and eligibility of the petitioners futile, redundant and illusory.

2.15. The petitioners therefore, made representations on 30.6.1971, 17.11.1971, 20.3.1974, 20.11.1975, 20.8.1974 and 13.12.1977 in this behalf.

2.16. As the petitioners grievances were not redressed the petitioners have filed this petition before this court. This petition was filed somewhere on 25.4.1979.

2.17 However, during the pendency of the petition the petitioners also amended the petition and also raised contention regarding amendment to the Rules of 1976 in this behalf. According to the petitioners there is nothing in these Rules which entitle a clerk to qualify himself for promotion to the post of Sales Tax Inspector to render such a qualified clerk not so qualified and so cannot be promoted as Sales Tax Inspector. The petitioner submitted that all persons duly qualified for promotion (within time and chances) under the Rules are similarly situated and are entitled to be equally treated and promoted.

#. Learned advocate for the petitioners has invited my attention to the original Rules of 1967 as well as to the

amended Rules of 1976. He submitted that the issues raised in this petition is covered by the decision of the Division Bench of this Court (Coram: P.S.Poti-C.J.{as then he was} and S.B.Majmudar-J {as then he was}) rendered in SCA Nos. 2860 of 1983 and allied matters rendered on 16.12.1983. He has referred to final conclusion and directions at item No.VIII. In paras (3) and (8) of the same, it has been held as under:

"(3) The main part of rule 7 confers a right on a person who has forfeited his chances under rule 6(2) by person of his failure to pass within the specified chances and specified time to write the examination over again but he is like a fresh entrant and his eligibility for promotion depends on his passing examination. When once he passes the examination, he becomes eligible for promotion but he would have no claim against those who had passed the examination within the specified period and specified chances and thereby had become eligible prior to the time he became eligible. He cannot claim that he should supersede his juniors who have become eligible earlier ion account of his passing the examination under rule 7"

"(8) Rule is not discriminatory or violative of Article 14. The proviso as amended confers an advantage on seniors who have passed beyond specified period and specified chances against their juniors who have also passed beyond specified period and specified changes. While those juniors who have already been promoted are not to be disturbed by their seniors who are yet to be promoted, juniors who have passed earlier than their seniors, but beyond specified period and chances have to yield their seniority to their seniors, if they had not been promoted by the time such seniors become qualified. It as not as if there is an arbitrarily choice. Those juniors who got advantage for the reason that they had been promoted are actually persons who have become eligible earlier than those juniors who are yet to be promoted. In otherwords, one class who had acquired eligibility earlier is treated as different from the lapses who had acquired eligibility later than item in order to accommodate seniors in between. Seniors could very well have been accommodated even above the juniors who had been promoted if that was the policy. But that is evidently not the policy

because the authority did not envisage disturbing those who had already been promoted. Since promotions would be on the basis of preference based on date of acquiring qualifications there is no hard in accommodating the seniors after those juniors who had already been promoted but before those who are yet to be promoted. Hence we see no invalidity in rule 7

Final conclusion

In the light of the aforesaid conclusions, the following directions are required to be issued in this group of matters.

It is necessary that in each of the districts the District Collector concerned should prepare the seniority list on the following principles

(1) Those clerks who have passed the qualifying examination i.e. within specified period and specified chances are entitled to rearrangement of seniority inter se with the persons of their own class on the basis of seniority (Rule 9) those who are seniority to them but who passed subsequently and beyond specified period and speechified chances cannot have any claim over those who fail under rule 9(2). Those who fall under Rule 9(2) become eligible for promotion when they acquire qualification by passing the examination and that day should determine their illegibility in the matter of promotion. There is no question of re-adjustment as between person of their class and persons who may be seniors to them but who passed the examination subsequently beyond the specified period and specified chances."

#. Ms. Joshi learned AGP appearing on behalf of the respondent Government has relied upon the affidavit in reply filed by the Assistant Commissioner of Sales tax filed in January 1994. She submitted that during the pendency of the petition the Sales Tax Department has revised the seniority as on 1.1.98 and published the State Level seniority list on 17.9.1999 and the same has been finalised on 25.5.2000. According to the learned AGP Ms. Joshi said seniority list meets with the

grievances of the petitioners and therefore the petition now does not survive. She further submitted that the Government has already gone through the judgment of the Division Bench of this Court and whatever directions given by the Division Bench have also been complied with.

#. I have gone through the record of the case. I have also also gone through the old and new Rules and also the judgment of the Division Bench of this Court which I have referred to earlier. In view of the fact that said judgment has been accepted by the Government, the same is binding on Government . In view of the same, the petitioners who have passed the qualifying examination within the specified period and chances are entitled to get seniority. On the basis of that seniority, they will be entitled to get promotion and all other consequential monetary benefits. All the petitioners will also get seniority to those who have not passed the examination within the specified time and chances. There is no question of readjustment as between the persons and their class and the person may be senior to them and who may not have passed the examination within the specified time and chances. In view of the same, I direct the Government to follow the earlier judgment of this court and give seniority to the petitioners accordingly and also deemed date of promotion in this behalf. The petition is accordingly allowed. Rule is made absolute. No order as to costs.

(K.M.Mehta.J)

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